

## § 160.203

guardian, or person acting *in loco parentis* of such minor.

(3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.

(4) With respect to the form or substance of an authorization or consent for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the authorization or consent, as applicable.

(5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

*Relates to the privacy of individually identifiable health information* means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

*State law* means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.

EFFECTIVE DATE NOTE: At 67 FR 53266, Aug. 14, 2002, in §160.202, revise paragraphs (2) and (4) of the definition of “more stringent”, effective Oct. 15, 2002. For the convenience of the user, the revised text is set forth as follows:

### § 160.202 Definitions.

\* \* \* \* \*

*More stringent* means \* \* \*

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

\* \* \* \* \*

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(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

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### § 160.203 General rule and exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) A determination is made by the Secretary under § 160.204 that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse related to the provision of or payment for health care;

(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

(iii) For State reporting on health care delivery or costs; or

(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established

under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

EFFECTIVE DATE NOTE: At 67 FR 53266, Aug. 14, 2002, in § 160.203, paragraph (b) was amended by adding the words “individually identifiable” before “health”, effective Oct. 15, 2002.

**§ 160.204 Process for requesting exception determinations.**

(a) A request to except a provision of State law from preemption under § 160.203(a) may be submitted to the Secretary. A request by a State must be submitted through its chief elected official, or his or her designee. The request must be in writing and include the following information:

- (1) The State law for which the exception is requested;
- (2) The particular standard, requirement, or implementation specification for which the exception is requested;
- (3) The part of the standard or other provision that will not be implemented based on the exception or the additional data to be collected based on the exception, as appropriate;
- (4) How health care providers, health plans, and other entities would be affected by the exception;
- (5) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets one or more of the criteria at § 160.203(a); and
- (6) Any other information the Secretary may request in order to make the determination.

(b) Requests for exception under this section must be submitted to the Secretary at an address that will be published in the FEDERAL REGISTER. Until the Secretary's determination is made, the standard, requirement, or implementation specification under this subchapter remains in effect.

(c) The Secretary's determination under this section will be made on the basis of the extent to which the information provided and other factors demonstrate that one or more of the criteria at § 160.203(a) has been met.

**§ 160.205 Duration of effectiveness of exception determinations.**

An exception granted under this subpart remains in effect until:

- (a) Either the State law or the federal standard, requirement, or implementation specification that provided the basis for the exception is materially changed such that the ground for the exception no longer exists; or
- (b) The Secretary revokes the exception, based on a determination that the ground supporting the need for the exception no longer exists.

**Subpart C—Compliance and Enforcement**

**§ 160.300 Applicability.**

This subpart applies to actions by the Secretary, covered entities, and others with respect to ascertaining the compliance by covered entities with and the enforcement of the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

**§ 160.302 Definitions.**

As used in this subpart, terms defined in § 164.501 of this subchapter have the same meanings given to them in that section.

**§ 160.304 Principles for achieving compliance.**

(a) *Cooperation.* The Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(b) *Assistance.* The Secretary may provide technical assistance to covered entities to help them comply voluntarily with the applicable requirements